



BODY WORN CAMERA SYSTEM

FC No.: 430

Date: 04-20-16

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

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I. Policy

- A. It is the policy of this department to utilize the Body-Worn Camera System (BWCS) for the purpose of documenting evidence and accurately recording, through video and audio, interactions that occur between officers and members of the public. All BWCS equipment and recordings are the property of the Montgomery County Police Department.
- B. ***The Montgomery County Police Department (MCPD) is a designee for the County on matters regarding BWCS for police officers working for Montgomery County government.***
- C. ***Article 72 of the Fraternal Order of Police Collective Bargaining Agreement (FOP CBA) and this policy govern the use of BWCS by Fraternal Order of Police (FOP) bargaining unit members.***

II. Definitions

- A. Body-Worn Camera System (BWCS) – a camera system worn on the person of a uniformed law enforcement officer, or an officer prominently displaying the officer's badge or other insignia, that is capable of recording video and intercepting oral communications.
- B. ***Officer – All sworn Montgomery County police officers.***
- C. ***Employee – All employees of the Montgomery County Police Department (both sworn and non-sworn).***
- D. ***FOP bargaining unit member – A sworn Montgomery County police officer up to and including the rank of Sergeant (including Police Officer Candidates).***

III. Legal Consideration

- A. Pursuant to the “State Wiretap Act” under Sections 10-401, et seq. of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, it is unlawful for any person to willfully intercept, endeavor to intercept, disclose, endeavor to disclose, use, or endeavor to use any oral communications. “Oral communication” is defined as any conversation or words spoken to or by any person in private conversation.
- B. The State Wiretap Act makes it lawful for a law enforcement officer, in the course of the officer’s regular duty, to intercept an oral communication with a body-worn digital recording device capable of recording video and oral communication if:
 - 1. The law enforcement officer is in uniform or prominently displaying the officer’s badge or other insignia;
 - 2. ***The law enforcement officer is making reasonable efforts to conform to standards in accordance with § 3-511 of the Public Safety Article for the use of body worn digital recording devices;***
 - 3. The law enforcement officer is a party to the oral communication;
 - 4. The law enforcement officer notifies, as soon as is practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so; and
 - 5. The oral interception is being made as part of a videotape or digital recording.
- C. The State Wiretap Act also makes it lawful for a law enforcement officer to intercept an oral communication where the officer is party to the communication and where all parties to the communication have given prior consent to the recording.

IV. Implementation

- A. The BWCS program will be instituted for designated uniformed officers for patrol and patrol related functions. The BWCS will accurately document events, actions, conditions and statements made during law enforcement related encounters and activities as authorized under this program.
- B. The Department will ***provide training to officers prior to use of the BWCS. Training will include, but will not be limited to, operation of the BWCS and a review of policy, as well as alternative methods for effective notification of recording to persons with special needs or limited English proficiency.***
- C. Participating officers will use the BWCS in accordance with their training, ***the FOP CBA (applicable to FOP bargaining unit members), and this policy. Violations of this policy may result in discipline.***

V. General Operational Procedures

- A. Only officers trained in the proper use of the BWCS will use the system.
- B. ***All BWCS recordings and recording devices will be used for official business only. Use of the BWCS will comply with all applicable laws, the FOP CBA (applicable to FOP bargaining unit members), and this policy.***
- C. Prior to going into service at the beginning of each shift, officers will perform ***a function test*** of the BWCS in accord with their training ***and manufacturers recommendations*** to ensure that the BWCS is operating

properly. *Officers discovering a BWCS malfunction shall promptly report the malfunction to a supervisor.*

- D. *The BWCS will be worn in a manner consistent with Department training.*
- E. Officers are only authorized to use a BWCS while in uniform or prominently displaying the officers badge or other insignia.
- F. Officers may, but will not be required to, use the BWCS while off duty. Any off duty use must be for law enforcement related encounters and activities as authorized under this policy.
- G. Officers are authorized to use a BWCS during secondary employment *in situations where the off-duty use is for law enforcement related encounters and activities as authorized under this policy.*
- H. Officers will only wear a department issued BWCS.

VI. Activation of the Body Worn Camera System

- A. Officers shall only activate the BWCS for legitimate law enforcement purposes.
- B. *Except as otherwise exempted by law*, officers will notify individuals that they are being recorded as soon as practicable, unless it is unsafe, impractical, or impossible to do so.
 - 1. *This notice provision is satisfied even if another individual becomes a party to the communication after the initial notice has been provided.*
 - 2. *Examples of potential notification language include:*
 - a. *“You are being audibly and visually recorded”; or*
 - b. *“Our interaction is being recorded by my body camera”.*
- C. The BWCS must be activated during all law enforcement related encounters and activities such as, but not limited to, the following examples;
 - 1. *At the initiation of a call for service or other activity that is investigative or enforcement in nature.*
 - 2. All enforcement and investigation related citizen contacts.
 - 3. Documentation of evidence that can be used in the prosecution of criminal and traffic offenses.
 - 4. Arrests and transports.
 - 5. Traffic stops.
 - 6. Priority responses.
 - 7. Vehicle and foot pursuits.
 - 8. Suspicious situations.
 - 9. All searches (persons, vehicles, structures, effects), except strip searches.
 - 10. Interviews and interrogations.
 - 11. Mental health interventions.
 - 12. Any contact that becomes adversarial after the initial contact, in a situation that would not otherwise require recording.
- D. Once the BWCS has been activated, officers will continue to record until:
 - 1. The officer has left the scene and anticipates no further involvement in the event;
 - 2. A supervisor has authorized that a recording may cease;
 - 3. *The officer is no longer engaged in a related investigative or enforcement activity; or*
 - 4. The event has concluded. An event will be deemed “concluded” when:
 - a. all arrests have been made and arrestees have been transported and released from custody;
 - b. all witnesses and victims have been interviewed;

- c. the continued recording will not serve to obtain additional evidence; and
 - d. no further law enforcement action is likely to occur.
- E. Whenever the BWCS equipment is deactivated, the officer must record a brief verbal explanation for the deactivation prior to turning off the recording.
- F. There may be instances in which officers are *unable to activate their BWCS due to circumstances making it unsafe, impossible, or impractical to do so. In these exigent circumstances, officers shall begin recording with the BWCS at the first reasonable opportunity to do so* and document the reason for the delayed start in the incident report and/or as part of the recording.
- G. In situations when community members, witnesses, crime victims or other parties wish to share information related to criminal activity, but refuse to do so while being recorded, officers will have the discretion to turn off the BWCS during the interview. The preference is to record such statements; however, it is recognized that such persons may be hesitant to provide information while being recorded due to a fear of retaliation, privacy concerns or a feeling that the information is sensitive. In these situations, officers may decide that obtaining the information is more important than recording the conversation. In such situation, the officer must record a brief verbal explanation for the deactivation prior to turning off the recording.
- H. The BWCS may be deactivated during conversations with officers or supervisors during information sharing sessions or discussing tactics and strategy.
- I. Officers are required to obtain consent prior to recording an interview with a victim of a sex offense. Consent in these cases must be documented/recorded on camera.

VII. Prohibited Use

- A. A BWCS will not be used to create recordings in locker rooms, dressing rooms, and restrooms unless part of a criminal investigation.
- B. A BWCS will not be used to create recordings of strip searches.
- C. A BWCS *shall not be used* to record *employees* during *routine* administrative activities.
- D. Officers will not intentionally record undercover officers or confidential informants without their consent.
- E. *Officers shall not record non-work related personal activity.*

VIII. Reporting/Documentation

- A. Whenever a BWCS recording is made of an event that results in a police report, the reporting officer must note in the report that the recording exists, if known.
- B. All BWCS recordings must be *uploaded* by the officer at the end of his or her assigned shift, unless an exception is authorized by a supervisor. The officer will be responsible for properly categorizing and tagging the recording at the time of the *upload*.

- C. In a critical incident (such as an officer involved shooting, in-custody death or other officer involved incident that results in serious injury or death), a supervisor may immediately take custody of the BWCS and, in such case, will be responsible for the *upload*.

IX. Internal Access, Review, and Use of Recordings

- A. *A BWCS recording may be reviewed by the recording officer for any work related reason, including but not limited to:*
1. *To ensure* the BWCS system is working properly.
 2. *To* assist with the writing of a report or other official document.
 3. *To* review/critique his or her own performance.
 4. *To* review/prepare for court.
 5. *To respond to a civil suit, criminal investigation (if the officer is the subject of the investigation), citizen complaint, or administrative complaint. The officer shall have the ability to review their BWCS recording of the subject incident prior to making a statement.*
- B. *Recordings may also be reviewed:*
1. By a supervisor.
 2. *By management for any legitimate matter, including, but not limited to:*
 - a. *to review evidence.*
 - b. *to participate in an official investigation such as a personnel complaint, administrative inquiry, or a criminal or civil investigation.*
 - c. *to assess training value.*
- C. *Officers are not allowed to view another officer's recording(s) except for a work-related reason which is authorized by a supervisor.*
- D. *An officer or FOP representative shall have access to a BWCS recording that is directly related to any administrative investigation or civil suit where the officer is named as a defendant.*
- E. *When a recorded incident or recording of an incident is used to question an officer during a formal internal investigation, access to all BWCS recordings related to the incident shall be provided to the officer at least five working days in advance of questioning.*
- F. *A supervisor shall review the BWCS recording of an incident when:*
1. *An officer is involved in a reportable use of force incident.*
 2. *An officer is injured during the performance of his or her duty.*
- G. *BWCS recordings shall not be routinely reviewed for the express purpose of discovering acts of misconduct or instances of poor performance without cause. An officer's supervisor may use BWCS recordings to address performance when cause exists. Any recording used must be reviewed with the subject officer prior to any documentation of performance. Any documented review will be included in the officer's supervisory file. The officer shall have the opportunity to respond in writing to the document. The response shall be attached to the supervisor's document. The officer and the officer's representative shall be provided access to the referenced recording if requested.*
- H. *Officers will be provided written notice from their immediate supervisor, or designee, of the intent to use a BWCS recording(s) for the purpose of performance evaluations which result in a below average rating in one or more categories.*
1. *This notice will be provided at least four months prior to the end of the rating period.*

2. *Any recording, supporting a below average rating, being referenced within the last four months of the rating period may also be used if the officer received written notice at least 30 days before the conclusion of the rating period.*
 3. *If a recording, supporting a below average rating, is referenced from the last 30 days of the rating period, the performance evaluation will serve as the written notice.*
 4. *Any portion of a recording used for the purpose of documenting below average performance in a performance evaluation will be reviewed with the subject officer and documented in a counseling session in accordance with Article 51, Section D, of the CBA.*
- I. *BWCS recordings may be used as a basis for discipline. Officers will be provided written notice of the department's intent to rely upon a BWCS recording(s) as a basis of discipline. This notice will be provided at the time the officer is served with the MCP 242 (Internal Investigation Notification Memorandum).*
1. *The officer will be afforded the opportunity to review the BWCS recording(s) related to the incident being investigated administratively with their selected representative at least five days prior to being interrogated.*
- J. *Officers will be provided written notice of the intent to utilize BWCS recordings for training purposes. The notice and opportunity to review the recording, will be provided at least ten working days before the recording is used in the training venue.*
1. *An officer captured in the recording (audio or video) may object to the use of the recording, in writing, to the Director of the Public Safety Training Academy (or designee) within five working days of receiving notice of intent to use the video for training as to why he or she does not wish the recording to be used. The Director of the Public Safety Training Academy (or designee) will consider any reason(s) submitted by the officer before proceeding with use. The decision shall be based upon a determination as to whether the training value outweighs the officer's objection.*
- K. *A log will be kept to record access to all recordings and officers shall have timely and ongoing access to the log. The log will include the:*
1. *Name of the employee accessing the recording;*
 2. *Reason for access with reasonable clarity;*
 3. *Date recording was accessed;*
 4. *Length of time it was reviewed, and*
 5. *Any copying or editing.*
- L. *A BWCS recording of a constitutionally protected activity may not be used to identify persons present at the activity who are not suspected of being engaged in illegal activity or in need of assistance.*
- M. *The stored video and audio data from a BWCS recording may not:*
1. *Be used to create a database or pool of mug shots;*
 2. *Be used as fillers in photo arrays; or*
 3. *Be searched using facial or voice recognition software.*
 - a. *This does not prohibit the use of recognition software to analyze the recording of a particular incident when a sworn supervisor has reason to believe that a specific suspect or person in need of assistance may be a subject of a particular recording.*
- N. *Employees shall not access, obtain, attempt to obtain, or copy/convert for their personal use any recording produced by a BWCS. Employees shall not upload BWCS recordings to public and/or social media websites.*

- O- *Except as authorized by policy*, employees shall not attempt to *copy*, delete, alter, *release*, reuse, modify or tamper with BWCS recordings in any manner. *Employees are prohibited from making a copy of a BWCS audio/video recording by using another recording device, such as a cell phone.*

X. Retention of Data

- A. All original BWCS recordings are the property of the Montgomery County Police Department and shall be *securely stored and* retained according to the department's retention schedule and consistent with state law and existing evidence protocols, unless a specific request is made to store them for a longer period of time by a person authorized by the Department.
- B. BWCS recordings that can be used in an investigation or captures a confrontational encounter between an officer and a member of the public will be deemed "evidentiary" and categorized and tagged according to the type of incident. Recordings that do not contain evidence or capture routine, non-confrontational encounters will be deemed "non-evidentiary".
- C. *Non-evidentiary* recordings will be destroyed after **210** days, unless the department deems it necessary to retain the recording for a longer period of time.
1. A recording will be retained *longer than 210 days* if an officer or the officer's representative provides notice to the Department within **210** days of the date of the recording of its potential use in an administrative hearing.
 2. *Performance evaluation shall not be the sole reason for the Department retaining a recording beyond the agreed upon term.*
 3. *An officer may elect to save BWCS recordings for longer than 210 days if the recording was used to support a performance evaluation which resulted in a single category being rated as below requirements.*
- D. *If an officer activates a BWCS generating a recording of a prohibited use or that is not a law enforcement related encounter or activity, the officer shall notify his or her supervisor promptly. Recordings deemed by the department to be recorded inadvertently and which are of no legitimate purpose to the department, shall be destroyed expeditiously.*

XI. Records Requests and Release of Recordings

- A. The public release of BWCS recordings will be conducted in accordance with applicable public records laws.
- B. *(This section applies to FOP bargaining unit member only)*
The Department shall ensure that all external requests for copies of recordings, including subpoenas and summonses, will be reviewed for compliance with applicable standards, including those imposed by law, provisions of this policy, and the FOP CBA (applicable to FOP bargaining unit members). The Department will maintain a log of all MPIA requests for BWCS recordings that it receives. The log, the underlying MPIA request, and the requested recording will be made available to the FOP for inspection. If the FOP objects to the release of any portion of the recording, it must promptly notify the department of its objection(s) and its intent to file a "reverse MPIA" action if the Department decides to release the requested recording. The Department will promptly notify the FOP of any decision to release the requested recording and the date and time of that release, unless the FOP first serves the department with a "reverse MPIA" action it has filed in a court of competent jurisdiction. The Department and the FOP will make all reasonable efforts to provide each other with expeditious notice under this section

given the relatively short time limits in the MPIA and its overall policy of providing the public with prompt access to public records without unnecessary delay.

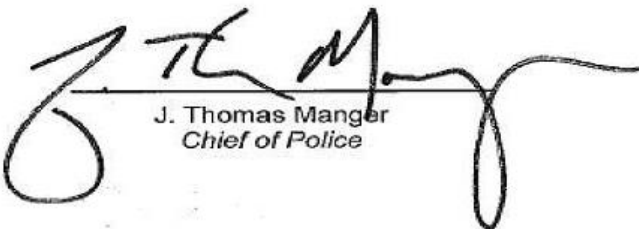
- C. *(This section applies to FOP bargaining unit member only)*
Release of BWCS recordings in absence of a specific request.
1. *The Department will provide written notice to the FOP prior to the release of any BWCS recording to the public, except in the event of an emergency or bona fide public safety need the Department may be unable to provide written notice until after the release. This does not include release of recordings in connection with litigation.*
 2. *In events where there is no exigency, an officer captured in the video or audio recording may object to the release of the recording, in writing, to the Chief of Police (or designee) within two calendar days of receiving notice of intent to release the recording as to any reason(s) why he or she does not wish the recording to be released. The Chief of Police (or designee) will consider any reason submitted by the officer before proceeding with release.*
- D. *The release of recordings of an officer's death or injury shall not occur absent compelling law enforcement related reasons to release the recording or in situations where the release of these recordings are required by law.*
- E. Recordings will not be disseminated by the employee without receiving written permission under the authority of the Chief of Police.

XII. CALEA Standards: 41.3.8

XIII. Proponent Unit: IMTD

XIV. Cancellation:

This directive cancels Function Code 430, effective date 06-08-15.



J. Thomas Manger
Chief of Police